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8 UNITED STATES DISTRICT COURT
9 DISTRICT OF NEVADA

10 JIMMY EARL DOWNS,

11 Plaintiff,

12 v.

13 DAVID GRUSMAN, HAROLD WICKHAM,
14 GLEN WHORTEN, AND THE STATE OF
NEVADA,

15 Defendants.

Case No. 2:07-cv-000116-JCM-LRL

MOTION FOR ENLARGEMENT OF TIME
(FIRST REQUEST)

16 COME NOW Defendants, DAVID GRUSMAN, HAROLD WICKHAM, and THE STATE
17 OF NEVADA, by and through their counsel, CATHERINE CORTEZ MASTO, Attorney
18 General, and J. MARTY HOWARD, Senior Deputy Attorney General, of the State of Nevada,
19 Office of the Attorney General, and hereby respectfully submit the instant MOTION FOR
20 ENLARGEMENT OF TIME (FIRST REQUEST) in the above-referenced matter. This Motion is

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brought pursuant to Fed.R.Civ.P. 6(b), LR 6-2, the attached Points and Authorities, and the papers and pleadings on file with the Court herein.

DATED this 2nd day of September, 2011.

Respectfully submitted,
CATHERINE CORTEZ MASTO
Attorney General

By: /s/ J. Marty Howard
J. MARTY HOWARD
Deputy Attorney General
Public Safety Division

POINTS AND AUTHORITIES

I. LEGAL ARGUMENT

Fed.R.Civ.P. 6(b)(1)(A) provides, in pertinent part:

(b) *Extending Time.*
(1) *In General.* When an act may or must be done within a specified time, the court may, for good cause, extend the time:
(A) with or without motion or notice if the court acts, or if a request is made, before the original time or its extension expires[.]

Rule 6(b)(1) allows for a party to move for an enlargement of time, the determination of which lies with the presiding court. "The Court has inherent power and discretion to control its docket, and the proceedings within the cases on its docket." *Ford v. County of Missoula, Mont.*, 2010 WL 2674036, 1 (D.Mont., 2010) (citing *Landis v. North American Co.*, 299 U.S. 248, 254 (1936); see also Fed.R.Civ.P. 6(b) (advisory committee note, 1946) ("Rule 6(b) is a rule of general application giving wide discretion to the court to enlarge these time limits or revive them after they have expired . . .").

Defendants are requesting an extension of time to file their Answer or other response to Plaintiff's Amended Civil Rights Complaint (Doc. 101) before the deadline has expired. Defendants are making this request based upon good cause to allow newly assigned counsel to become familiar with the matters currently pending before this Court.

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Undersigned counsel, Senior Deputy Attorney General J. Mary Howard, was recently assigned as lead counsel on this case.¹ In addition to the instant matter, undersigned counsel has recently been assigned approximately 21 ongoing litigation cases and is also receiving assignments of newly filed litigation cases.

Counsel is in the process of creating hard files from computer files for all the cases recently assigned to him, including this matter. Furthermore, counsel only obtained furniture in his office on September 1, 2011, and until such time his resources were limited.

Based upon the foregoing, Defendants respectfully request a 35-day enlargement of time in which to file Defendants' Answer or other response to Plaintiff's Amended Civil Rights Complaint to and including October 7, 2011. This request is made in good faith and not for purposes of delay.

III. CONCLUSION

Because good cause has been shown, Defendants respectfully request the Court to enlarge the time by which they must file an Answer or other response to Plaintiff's Amended Civil Rights Complaint pursuant to Fed.R.Civ.P. 6(b) by 35 days to October 7, 2011.

Dated this 2nd day of September, 2011.

Respectfully submitted,

CATHERINE CORTEZ MASTO
Attorney General

By: /s/ J. Marty Howard
J. MARTY HOWARD
Deputy Attorney General
Nevada State Bar No. 1052
Public Safety Division

"IT IS SO ORDERED:


UNITED STATES MAGISTRATE JUDGE

DATED: 9-9-11

¹ See Notice of Change of Lead Counsel filed herein on August 16, 2011 (Doc. 98)

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Office of the Attorney General and that on the 2nd day of September, 2011, I served the foregoing **MOTION FOR ENLARGEMENT OF TIME (FIRST REQUEST)** by causing a true and correct copy thereof to be filed with the Clerk of the Court using the CM/ECF system and by causing a true and correct copy thereof to be delivered to the Department of General Services, for mailing at Las Vegas, Nevada, addressed to the following:

JIMMY EARL DOWNS #63678
SOUTHERN DESERT CORRECTIONAL CENTER
PO BOX 208
INDIAN SPRINGS NV 89070

/s/ Haunani D. Magalianes
An employee of the Office of the Attorney General

DECLARATION J. MARTY HOWARD

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

Affiant, J. MARTY HOWARD, being first duly sworn, hereby states that:

I present this Affidavit in support of Defendants Motion for Enlargement of Time (First Request) in the United States District Court, District of Nevada Case No. 2:07-cv-0116-JCM-LRL, *Jimmy Earl Downs v. David Grusman, et. al.*; I have personal knowledge of and am competent to testify regarding the matters stated in this Declaration.

I am an attorney licensed to practice in the State of Nevada, and I am admitted to practice in the United States District Court for the District of Nevada.

I am currently employed as a Sr. Deputy Attorney General at the Nevada Office of the Attorney General, Bureau of Litigation, Public Safety Division, NDOC Unit, in Las Vegas Nevada, and have been assigned to represent Defendants in the United States District Court, District of Nevada Case No. 2:07-cv-0116-JCM-LRL, *Jimmy Earl Downs v. David Grusman, et. al.* The Notice of Change of Lead Counsel (Doc. 98), was served and filed on August 16, 2011.

On August 19, 2011, Plaintiff filed his Amended Civil Rights Complaint (Doc. 101). Accordingly, Defendants' are required to file and serve their Answer or other response to Plaintiff's Amended Civil Rights Complaint on September 2, 2011.

I officially have been reassigned to work in the litigation division and just moved into my office on August 17, 2011. On August 16, 2011, undersigned counsel through the Nevada Office of the Attorney General, was assigned as lead counsel to the instant matter, as well as approximately 21 additional ongoing litigation cases. Undersigned counsel is also being assigned to new litigation matters in addition to his current ongoing litigation caseload.


I just obtained furniture in my office on September 1, 2011. My personal belongings are in boxes including, but not limited to, my legal books and materials. Until I received my furniture on September 1, 2011, my resources were limited. Furthermore, I am in the process of creating hard case files from computer case files for all the cases recently assigned to me. As such, I am respectfully requesting an additional 35-day extension in this matter to gather information, conduct legal research, and prepare a meaningful response to Plaintiff's Amended Civil Rights Complaint (Doc. 101).

This is the first request for an extension being made by, and on behalf of, Defendants DAVID GRUSMAN, HAROLD WICKHAM and THE STATE OF NEVADA in this matter.

This request is being made prior to the expiration of the deadline and is being made in good faith and not for the purpose of delay.

FURTHER AFFIANT SAYETH NAUGHT.

DATED this 2nd day of September, 2011.


J. MARTY HOWARD

SUBSCRIBED AND SWORN to before me this 2nd day of September, 2011.


NOTARY PUBLIC in and for
said County and State.

